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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/653,520	09/02/2003	Jonathon L. Kimmel	00138CIPCON(3600-360-01)	3339

7590 05/18/2006

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EXAMINER

MAI, NGOCLAN THI

ART UNIT	PAPER NUMBER
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1742

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/653,520	Applicant(s) KIMMEL ET AL.	
	Examiner Ngoclan T. Mai	Art Unit 1742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) See Continuation Sheet is/are allowed.
- 6) ☒ Claim(s) 38-40, 87-88, 90-91, 93-94, 151-156 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 28-41, 47-55, 57-58, 60-61, 63-64, 66-67, 69-70-72-73, 75-76, 78-79, 81-82, 84-85, 87-88, 90-91, 93-97, 113-168.

Continuation of Disposition of Claims: Claims allowed are 28-37, 41, 47-55, 57-58, 60-61, 63-64, 66-67, 69-70-72-73, 75-76, 78-79, 81-82, 84-85, 95-97, 113-150, 157-168.

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DETAILED ACTION

1. Currently claims 28-41, 47-55, 57-58, 60-61, 63-64, 66-67, 69-70, 72-73, 75-76, 78-79, 81-82, 84-85, 87-88, 90-91, 93-97, 113-168 are pending.
2. Upon further consideration following is the rejection of claims 38-40, 87-88, 90-91, 93-94, 151-156 on art of record.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

4. Claims 38-40, 87-88, 90-91, 93-94, 151-156 rejected under 35 U.S.C. 102(e) as being anticipated by Fife (U.S. Patent No. 6,416,730).

Fife disclosed reduced niobium oxide having a microporous surface and a spong-like structure, wherein the primary particle size is 1 micron or less, col. 4, lines 32-34. Fife also teaches the oxygen reduced niobium oxide can be agglomerated, col. 3, line 63 to col. 4, line 9. In example 1, Fife discloses oxygen reduced niobium oxide produced being screen through a 40 mesh screen, col. 7, lines 7-10. The oxygen reduced niobium oxide powder, which passes through this mesh screen, would have agglomerated particle size of less than 420 microns.

Fife further discloses the oxygen reduced niobium oxide powder having particle size smaller than 60 mesh but larger than 100 mesh (149-250 microns) which reads on the limitations as recited in claims 39-40, see example 2. col. 7.

As for claims 87-88, 90-91, 93-94, 151-156, Fife teaches the claimed limitations in col. 4, lines 13-25.


5. Claims 28-37, 41, 47-55, 57-58, 60-61, 63-64, 66-67, 69-70, 72-73, 75-76, 78-79, 81-82, 84-85, 95-97, 113-150, 157-168 are deemed allowable.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ngoclan T. Mai whose telephone number is (571) 272-1246. The examiner can normally be reached on 9:30-6:00 PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Ngoclan T. Mai
Primary Examiner
Art Unit 1742

n.m.